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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,145	09/16/2003	Ralph Alan Sutton	SYN.P.US0037	2162
26360	7590	03/17/2005	EXAMINER	
RENNER, KENNER, GREIVE, BOBAK, TAYLOR & WEBER FIRST NATIONAL TOWER FOURTH FLOOR 106 S. MAIN STREET AKRON, OH 44308			PRUNNER, KATHLEEN J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/663,145	Applicant(s) SUTTON ET AL.	
	Examiner Kathleen J. Prunner	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1 and 4-8 are rejected under 35 U.S.C. 102(a) as being anticipated by Zell et al. Zell et al. disclose a woven pool cover having all the claimed features including thermoplastic (note the first sentence in ¶ 0033) warp and fill yarns (note ¶ 0023) that provides at least 95% shade (note the first sentence in ¶ 0018) with the warp yarn having a denier ranging from 500-700 deniers (note ¶ 0023) and the weft yarn having a denier ranging from about 2000 to about 4000 (note ¶ 0023). With respect to claim 4, Zell et al. further disclose that the thermoplastic yarns are a polyolefin (note the first sentence in ¶ 0033). With regard to claim 5, Zell et al. additionally disclose that the polyolefin is polypropylene (note the first sentence in ¶ 0033). With regard to claim 6, Zell et al. also disclose that the warp yarn has 30 to 40 threads per inch and the fill yarn has 10 to 20 threads per inch (note ¶ 0022). With respect to claim 7, Zell et al. further disclose that the woven pool cover provides 100% shade (note ¶s 0018 and 0029). With regard to claim 8, Zell et al. also disclose that the woven pool cover is permeable to air to the extent of from 5 CFM to 30 CFM (note ¶ 0028).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zell et al. Zell et al. also disclose that the fill yarn has a thickness or diameter of approximately 3000 denier or 0.076 inches and that the warp yarn has a thickness or diameter of approximately 525 denier or 0.026 inches (note the last sentence in ¶ 0033). Although it is considered that the yarn thickness or diameter necessary to effect a 100% shading is an obvious expedient to the skilled artisan, to use a yarn thickness or diameter of about 0.004 to 0.009 inches in Zell et al. to effect 100% shading is simply the result of optimization of the prior art teachings through routine experimentation, which is not a matter of invention, absent a showing to the contrary (see *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), and *In re Hoeschele*, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969)).

Response to Arguments

5. Applicant's arguments filed December 23, 2004 have been fully considered but they are not deemed persuasive.

6. Applicant's argument that the Zell et al. reference does not show fibrillated weft or fill yarn has been carefully considered. However, the Zell et al. reference clearly discloses that the weft or fill yarn is formed of threads (note ¶ 0023) and that the threads are fibers, i. e., fibrillated (note line 1 of ¶ 0034).

7. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the weft yarn is fibrillated and the warp yarn is flat and non-fibrillated) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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8. Applicant's argument concerning the fibrillated yarn has been considered. However, according to the Merriam-Webster OnLine Dictionary, "fibrillation" is defined as "an act or process of forming fibers or fibrils". Since the Zell et al. reference refers to yarn formed of threads or fibers, it is considered that the Zell et al. reference uses fibrillated yarn.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

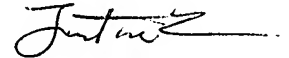
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen J. Prunner whose telephone number is 571-272-4894. The examiner can normally be reached on Monday through Friday, 5:30 AM to 2 PM.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**

3/5/05



Kathleen J. Prunner

March 11, 2005